

August 3, 2023

Carolyn M. Murray
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BY ELECTRONIC MAIL ONLY (openmeeting@state.ma.us)

Carrie Benedon, Esq.
Director, Division of Open Government
Office of Attorney General
One Ashburton Place
Boston, MA 02108

Re: Town of Wellfleet – Shellfish Advisory Board
Open Meeting Law Complaint from Jude Ahern dated July 28, 2023

Dear Ms. Benedon:

Please be advised that this firm serves as Town Counsel to the Town of Wellfleet (the “Town”). The Town’s Shellfish Advisory Board (“Board”) is in receipt of an Open Meeting Law Complaint (the “Complaint”) filed by Ms. Jude Ahern (the “Complainant”), dated July 28, 2023, which was received by the Town that same day. The Complaint alleges that the Board violated the Open Meeting Law by deliberating outside of a posted meeting on June 29, 2023. The Complaint further alleges that the order of agenda items on the July 28, 2023 meeting agenda is improper and that the Shellfish Constable should not be involved in Board meetings except as a guest or invited guest. A copy of the Complaint is attached hereto as Exhibit 1.

On August 7, 2023, the Board met in open session at a properly posted meeting to discuss the Complaint and consider its response. The Board has carefully reviewed the allegations contained in the Complaint and, following such discussion, has authorized this response on its behalf, in accordance with G.L. c.30A, §23 and 940 CMR 29.05(5), which is based upon information provided by the Town.

DISCUSSION

No violation of the Open Meeting Law occurred on either June 29, 2023 nor July 28, 2023 for the following reasons:

I. No quorum of the Board met on June 29, 2023.

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The Law requires that meetings of a public body be noticed and open to the public, unless an executive session is convened. G.L. c.30A, §§20(a–b), 21. A “meeting” is defined, in relevant part, as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” G.L. c30A, § 18. “[D]eliberation” is “an oral or written

Carrie Benedon, Esq.
Director, Division of Open Government
August 3, 2023
Page 2

communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” *Id.* For the purposes of the Open Meeting Law, a “quorum” is a simple majority of the members of a public body. *Id.*

The Board could not have violated the Open Meeting Law on June 29, 2023 because no quorum of the Board ever met nor communicated. While a Board meeting was scheduled for June 29, 2023, the Chair canceled the meeting that day following a meeting between the Board chair, a Board member, the Shellfish Constable, and an attorney from this firm. No other members of the Board were present at this meeting. The Board consists of seven members and two alternates, with a quorum of four members. As only the Board chair and one Board member attended the meeting, there was no quorum present and thus no violation of the Open Meeting Law occurred. Finally, while the Complainant has requested that draft “minutes” from this meeting be released, the Board reiterates that this was not a meeting as defined under the Open Meeting Law, and therefore, no minutes are required. Further, the meeting that did occur on this date included discussions with Town Counsel, and releasing meeting notes would violate attorney-client privilege and/or attorney work product. Regardless, a summary of topics discussed with Town Counsel was shared with the Board.

II. The allegations relative to the July 28, 2023 meeting are plainly in accord with the Open Meeting Law.

The Complaint further alleges that the order of agenda items on the July 28, 2023 meeting agenda is improper and that the Shellfish Constable should not be involved in Board meetings without the Board’s permission. Neither of these allegations shows a violation of the Open Meeting Law. First, the Open Meeting Law requires that a “public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays...[n]otice shall...contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting” (emphasis added). G.L. c.30A, §20(b). The Open Meeting Law does not command nor require a particular order of agenda items.

Second, the Open Meeting Law provides that “[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. G.L. c.30A, §20(g). The Open Meeting Law does not require, as the Complaint alleges, that non-public body members “should have no part in the Shellfish Advisory Board meetings other than as a guest or invited guest.” Should the Chair assent to the Shellfish Constable addressing the Board as a regular participant, as here, the Open Meeting Law has been complied with.



Carrie Benedon, Esq.
Director, Division of Open Government
August 3, 2023
Page 3

CONCLUSION

Based on the foregoing, the Board respectfully submits that there has been no violation of the Open Meeting Law and as such, the Board considers this matter resolved.

Please do not hesitate to contact me if you require additional information.

Very truly yours,

Carolyn M. Murray

CMM/mad

Enc.

cc: Jude Ahern (by e-mail only to jude@judeahern.com)
Shellfish Advisory Committee

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